

### Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Thus, the claims have been amended in response to the objections on page 5 of the Office Action, to limit them to the elected subject matter, in consideration of the Examiner's comments on page 3 of the Office Action concerning what the search will encompass. Applicants emphasize that these amendments are without prejudice to their rights under 35 U.S.C. §121 to file a divisional application for the remaining subject matter.

Likewise, claims 6 and 8, withdrawn from consideration, have been cancelled, again without prejudice to the filing of a divisional application.

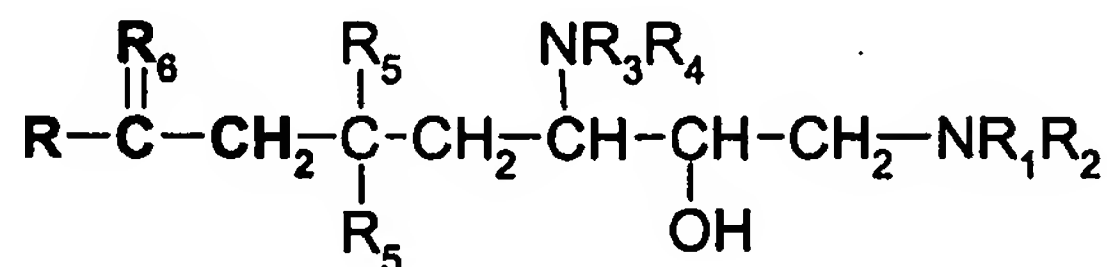
Claims 7 and 11-14 have been amended to insert language for a pharmaceutically inert excipient, based on the disclosure on page 22, line 9 from the bottom of the specification.

Claim 9, although withdrawn from consideration, has been amended to place it in more conventional form according to U.S. practice, i.e., by reciting a "method of use", instead of the "use of". Applicants expect that claim 9 will be rejoined with the other claims upon allowance of claim 1, in accordance with current U.S. practice.

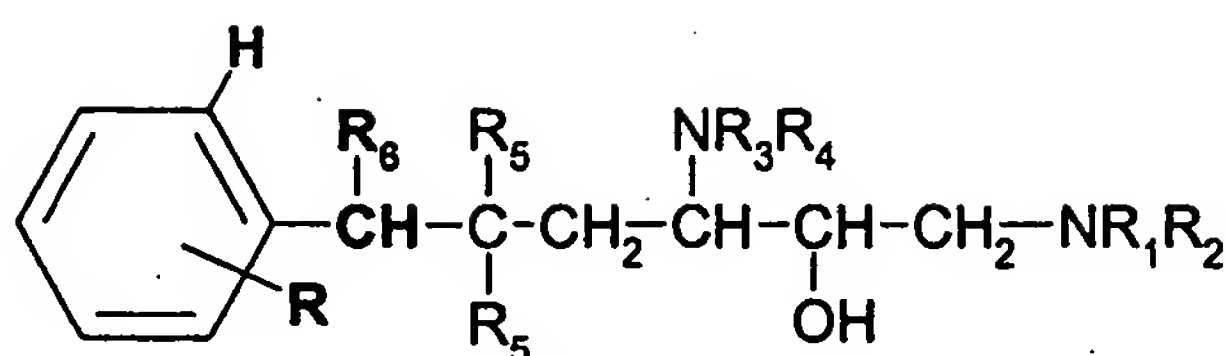
The other claim amendments, specifically in line 1 of each claim, are editorial in nature.

The provisional rejection of claims 1-5, 7 and 10-14 for obviousness-type double patenting as being unpatentable over claims 1-7 and 9 of Serial No. 10/593,461, and also over claims 1-6 and 9-11 of Serial No. 10/586,814, are respectfully traversed.

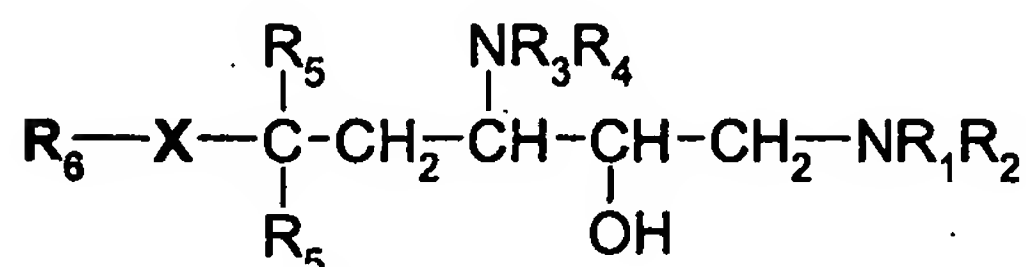
A comparison among the claims of the instant application, the '814 application and the '461 application is set forth below:



Instant application



'814 application



'461 application

First, the general formula of the instant application does not overlap with the formula of '814 since  $R-CR_6-CH_2-$  in the instant application can not correspond to  $Ph-CHR_6-$ .

Second, the general formula of the instant application does not overlap with the formula of '461 since  $R-CR_6-CH_2-$  in the instant application can not correspond to  $R_6-X$  in '461.

Further, a compound of the instant application is neither an obvious variation of the compounds of '814, nor an obvious variation of the compounds of '461, since:

first, the bridge between the C-atom bearing the  $R_5$ -groups and the terminal radicals R (in the instant application), phenyl (in '814), and  $R_6$  (in '461) is different, and

second, in case  $R_6$  in '461 is a heterocyclyl, this cannot be considered as an obvious variation of the heterocyclyl R in the instant application since the heterocyclyl is bonded via an N-atom, which is not the case for the '461 application.


Third, in case  $R_6$  in the instant application is a heterocyclyl, this cannot be considered as an obvious variation of the phenyl in the '814 application.

For these reasons, Applicants take the position that the double patenting rejection based on the '814 and '461 application claims should be withdrawn.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of objection and rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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